

IN THE UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF VIRGINIA  
(Roanoke Division)

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In re )  
BAYVIEW HOLDINGS, LLC, ) Chapter 11  
Debtor. ) Case No. 09-72799  
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)

**MOTION TO DISMISS CASE**

Bayview Holdings, LLC, the debtor and debtor-in-possession in the above-captioned case, by counsel and pursuant to 11 U.S.C. §1112(b), hereby moves this Court for entry of an order dismissing the case.

**Jurisdiction and Venue**

1. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2). Venue of this case and this motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.
2. The statutory predicates for the relief requested herein are Bankruptcy Code § 1112(b).

**Background**

3. On November 2, 2009 (the “Petition Date”), the Debtor filed a voluntary petition in this Court for relief under Chapter 11 of the Bankruptcy Code.
4. As of the Petition Date, the Debtor owned three developments. The first was known as The Villages at Emerald Bay and was comprised of 29 lots at Smith Mountain Lake

held for sale. The Villages at Emerald Bay was subject to a first-priority deed of trust in favor of Branch Banking & Trust Company (BB&T). BB&T also held a first-priority lien on two lots in Emerald Bay Estates, a second development. Upon BB&T's motion, the Court granted relief from the automatic stay pursuant to 11 U.S.C. § 362(d). On or about March 24, 2010, The Villages at Emerald Bay and the two lots in Emerald Bay Estates were sold at a foreclosure sale.

5. The Debtor's third development was known as Baywatch Estates, which was comprised of 14 lots at Smith Mountain Lake held for sale. Baywatch Estates was subject to a first-priority deed of trust in favor of the Bank of Floyd. Bank of Floyd also held a first lien on one remaining lot in Emerald Bay Estates. On July 12, 2011, on the motion of Bank of Floyd, the Court granted relief from the automatic stay pursuant to 11 U.S.C. § 362(d). Upon information and belief, Bank of Floyd is preparing to sell the property subject to its liens.

6. Prior to Bank of Floyd's obtaining relief, the Debtor proposed a plan of liquidation that provided for the sale of the property subject to the lien of Bank of Floyd. The Court denied confirmation of the Debtor's proposed plan on July 12, 2011.

7. Upon the sale of Bank of Floyd's collateral, the Debtor will have no assets.

**Relief Requested**

8. 11 U.S.C. § 1112(b) permits the Court, on request of a party in interest, to dismiss a case for cause.

9. The lack of any assets available for distribution to creditors constitutes cause for dismissal of this Chapter 11.

WHEREFORE, the Debtor requests that the Court dismiss this case with prejudice, prohibiting the debtor from refiling for 365 days, and granting any further relief the Court deems proper.

BAYVIEW HOLDINGS, LLC

By: /s/ Bruce E. Arkema

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*Counsel for Bayview Holdings, LLC, Debtor and Debtor-in-Possession*

**CERTIFICATE OF SERVICE**

I certify that on the 12<sup>th</sup> day of August, 2011, a true and accurate copy of the foregoing Motion was served, via the Court's ECF system and/or via first-class mail, on all creditors, equity security holders and other interested parties and the U. S. Trustee.

/s/ Bruce E. Arkema